

## INFORMATION TECHNOLOGY GENERAL TERMS AND CONDITIONS

IN ADDITION TO THE GENERAL PROVISIONS ABOVE , THE FOLLOWING TERMS AND CONDITIONS SHALL APPLY

### 1. Definitions

- a. Acceptance Tests—Those tests performed during the Performance Period which are intended to determine compliance of equipment and software with the specifications and all other attachments incorporated herein by reference and to determine the reliability of the equipment.
- b. Application Program—A computer program which is intended to be executed for the purpose of performing useful work for the user of the information being processed. Application programs are developed or otherwise acquired by the user of the hardware/software system, but they may be supplied by the Contractor.
- c. Attachment—As applied to Information Technology equipment, a mechanical, electrical, or electronic interconnection to the Contractor-supplied machine or system, of equipment manufactured by other than the original equipment manufacturer and which is not connected by the Contractor.
- d. Data Processing Subsystem—A complement of Contractor-furnished individual machines, including the necessary controlling elements (or the functional equivalent) and operating software, if any, which are acquired to operate as an integrated group, and which are interconnected entirely by Contractor-supplied power and/or signal cables; e.g., direct access controller and drives, a cluster of terminals with their controller, etc.
- e. Data Processing System (System)—The total complement of Contractor-furnished machines, including one or more central processors (or instruction processors) and operating software, which are acquired to operate as an integrated group.
- f. Designated CPU(s)—For each product, the term “Designated CPU(s)”, if applicable, means the central processing unit of the computers or the server unit, including any associated peripheral units. If no specific “Designated CPU(s)” are specified on the Lease Order, the term shall mean any and all CPUs located at the site specified therein.
- g. Documentation—For each product governed by this Agreement, the term “Documentation” shall mean Licensor’s standard user documentation for the computer software program(s).
- h. Equipment—An all-inclusive term which refers either to individual machines or to a complete data processing system or subsystem, including its operating software (if any).
- i. Equipment Failure—A malfunction in the equipment, excluding all external factors, which prevents the accomplishment of the equipment’s intended function(s). If microcode or operating software residing in the equipment is necessary for the proper operation of the equipment, a failure of such microcode or operating software which prevents the accomplishment of the equipment’s intended functions shall be deemed to be an equipment failure.
- j. Facility Readiness Date—The date specified in the Agreement by which the State must have the site prepared and available for equipment delivery and installation.
- k. Installation Date—The date specified in the Agreement by which the Contractor must have the ordered equipment ready (certified) for use by the State.

- l. Information Technology – includes, but is not limited to, all electronic technology systems and services, automated information handling, system design and analysis, conversion of data, computer programming, information storage and retrieval, telecommunications which include voice, video, and data communications, requisite system controls, simulation, electronic commerce, and all related interactions between people and machines.
- m. Lease Order—Any legal order issued under the authority of the Master Rental Agreement resulting from this Request for Proposals.
- n. Machine—An individual unit of a data processing system or subsystem, separately identified by a type and/or model number, comprised of but not limited to mechanical, electro-mechanical, and electronic parts, microcode, and special features installed thereon and including any necessary software, e.g., central processing unit, memory module, tape unit, card reader, etc.
- o. Machine Alteration—Any change to a Contractor-supplied machine which is not made by the Contractor, and which results in the machine deviating from its physical, mechanical, electrical, or electronic (including microcode) design, whether or not additional devices or parts are employed in making such change.
- p. Maintenance Diagnostic Routines—The diagnostic programs customarily used by the Contractor to test equipment for proper functioning and reliability.
- q. Operating System Software—Those routines, whether or not identified as program products, that reside in the equipment and are required for the equipment to perform its intended function(s), and which interface the operator, other Contractor-supplied programs, and user programs to the equipment.
- r. Operational Use Time—For performance measurement purposes, that time during which equipment is in actual operation by the State. For maintenance operational use time purposes, that time during which equipment is in actual operation and is not synonymous with power on time.
- s. Performance Testing Period—A period of time during which the State, by appropriate tests and production runs, evaluates the performance of newly installed equipment and software prior to its acceptance by the State.
- t. Period of Maintenance Coverage—The period of time, as selected by the State, during which maintenance services are provided by the Contractor for a fixed monthly charge, as opposed to an hourly charge for services rendered. The Period of Maintenance Coverage consists of the Principal Period of Maintenance and any additional hours of coverage per day, and/or increased coverage for weekends and holidays.
- u. Preventive Maintenance—That maintenance, performed on a scheduled basis by the Contractor, which is designed to keep the equipment in proper operating condition.
- v. Principal Period of Maintenance—Any eleven (11) consecutive hours per day (usually between the hours of 7:00 a.m. and 6:00 p.m.) as selected by the State, including an official meal period not to exceed one hour, Monday through Friday, excluding holidays observed at the installation.
- w. Programming Aids—Contractor-supplied programs and routines executable on the Contractor's equipment which assists a programmer in the development of applications including language processors, sorts, communications modules, data base management systems, and utility routines, (tape-to-disk routines, disk-to-print routines, etc.).

- x. Program Product—Programs, routines, subroutines, and related items which are proprietary to the Contractor and which are licensed to the State for its use, usually on the basis of separately stated charges and appropriate contractual provisions.
- y. Remedial Maintenance—That maintenance performed by the Contractor which results from equipment (including operating software) failure, and which is performed as required, i.e., on an unscheduled basis.
- z. Site License—For each product, the term “Site License” shall mean the license established upon acquisition of the applicable number of copies of such product and payment of the applicable license fees as set forth in the Agreement.
- aa. Software—An all-inclusive term which refers to any computer programs, routines, or subroutines supplied by the Contractor, including operating software, programming aids, application programs, and program products.
- bb. Software Failure—A malfunction in the Contractor-supplied software, other than operating software, which prevents the accomplishment of work, even though the equipment (including its operating software) may still be capable of operating properly. For operating software failure, see definition of equipment failure.

## **2. Documentation**

- a. The Contractor agrees to provide to the State, at charges no more than those made by the Contractor to its other customers for similar publications, a number of all nonproprietary manuals and other printed materials, and updated versions thereof, which are necessary or useful to the State in its use of the equipment or software provided hereunder. The Contractor agrees to provide additional documentation at prices not in excess of charges made by the Contractor to its other customers for similar documentation. Upon request, the State will identify any copies of Contractor documentation retained for disaster recovery purposes.
- b. If the Contractor is unable to perform maintenance or the State desires to perform its own maintenance on equipment purchased under this contract then upon written notice by the State the Contractor will provide at Contractor’s then current rates and fees adequate and reasonable assistance including relevant documentation to allow the State to maintain the equipment based on Contractor’s methodology. The Contractor agrees that the State may reproduce such documentation for its own use in maintaining the equipment. If the Contractor is unable to perform maintenance, the Contractor agrees to license any other Contractor that the State may have hired to maintain the equipment to use the above noted documentation. The State agrees to include the Contractor’s copyright notice on any such documentation reproduced, in accordance with copyright instructions to be provided by the Contractor.

## **3. Limitation of Liability**

- a. Except when being maintained or tested by the Contractor, the equipment shall be under the State’s exclusive management and control. The State agrees that the Contractor shall not be liable for any damages caused by the State’s failure to fulfill any State responsibilities of assuring the proper use, management, and supervision of the machines and programs, audit controls, operating methods, and office procedures, and for establishing all proper checkpoints necessary for the State’s intended use of the machines.

- b. In all situations involving performance or nonperformance of machines, model upgrades, features or programming furnished under this Agreement, the Contractor shall adjust or repair the machine, model upgrade or feature, or replace its parts or, at the Contractor's option, replace the machine, model upgrade or feature, or correct programming errors. If after repeated efforts, the Contractor is unable to install the machine, model upgrade or feature, or a replacement machine, model upgrade or feature in good working order, or to restore it to good working order, or to make the software operate, all as warranted, the State shall be entitled to recover actual damages to the limits set forth herein. For any other claim concerning performance or nonperformance by Contractor pursuant to the lease of equipment under this Agreement or to service related to the lease of equipment under this Agreement, the State shall be entitled to recover actual damages to the limits set forth herein.
- c. Contractor's liability for damages to the State for any cause whatsoever, and regardless of the form of action, whether in contract or in tort, shall be limited to the greater of:
  - (1) Two hundred thousand dollars (\$200,000) or
  - (2) Twelve (12) monthly lease charges for all machines on the Lease Order that caused the damage, or which were rendered inoperable, or could not be used due to the failure of the Contractor to provide machines, software or services as called for in this Agreement
- d. State's liability for damages for any cause whatsoever, and regardless of the form of action whether in contract or in tort, excluding negligence, shall be limited to the greater of \$200,000 or the twelve (12) monthly lease charges for all machines on the Lease Order that caused the damage, or which were rendered inoperable, or could not be used due to the failure of the Contractor to provide machines, software or services as called for in this Agreement. In those instances where Contractor has failed to perform as called for by the contract, the Limitation of Liability provided above shall not limit any right to recover the 'Cost to Cover.'
- e. The foregoing limitation of liability shall not apply to the payment of costs and damage awards referred to in the Paragraph of the General Provisions, entitled "Patent, Copyright, and Trade Secret Protection", to claims covered by other specific provisions calling for liquidated damages or specifying a different limit of liability, or to claims for injury to persons or damage to property caused by Contractor's negligence. This limitation of liability does not apply to the receipt of court costs or attorney's fees that might be awarded by a court in addition to damages after litigation based on this contract.
- f. In no event will either the Contractor or the State be liable for consequential damages even if notification has been given as to the possibility of such damages.

#### **4. Limitation of Actions**

This section is deleted.

#### **5. Rights in Data**

- a. All technical communications and records originated or prepared by the Contractor pursuant to this Agreement including papers, reports, charts, computer programs, and

other documentation, but not including Contractor's administrative communications and records relating to this Agreement shall be delivered to and shall become the exclusive property of the State and may be copyrighted by the State.

- b. The ideas, concepts, know-how, or techniques relating to data processing, developed during the course of this Agreement by the Contractor or jointly by the Contractor and the State can be used by either party in any way it may deem appropriate.
- c. All inventions, discoveries or improvements of the computer programs developed pursuant to this Agreement shall be the property of the State. The State agrees to grant a nonexclusive royalty-free license for any such invention, discovery, or improvement to the Contractor program or any other such person and further agrees that the Contractor or any other such person may sublicense additional persons on the same royalty-free basis.
- d. This Agreement shall not preclude the Contractor from developing materials outside this Agreement which are competitive, irrespective of their similarity to materials which might be delivered to the State pursuant to this Agreement.

## **6. Protection of Proprietary Software and Other Proprietary Data**

- a. State agrees that all material appropriately marked or identified in writing as proprietary, and furnished hereunder are provided for State's exclusive use for the purposes of this Contract only and will be held in confidence. All such proprietary data shall remain the property of the Contractor. State agrees to take all reasonable steps to insure that such proprietary data are not disclosed to others, without prior written consent of the Contractor.
- b. The State will insure, prior to disposing of any media, that any licensed materials contained thereon have been erased or otherwise destroyed.
- c. The State agrees that it will take appropriate action by instruction, agreement or otherwise with its employees or other persons permitted access to licensed software and other proprietary data to satisfy its obligations under this Contract with respect to use, copying, modification and protection and security of proprietary software and other proprietary data.